STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 30, 2011
v	No. 297645 Wayne Circuit Court
CHARLENE WILLIAMS, Defendant-Appellant.	LC No. 09-029262-FH

Before: FITZGERALD, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

Defendant appeals as of right her bench trial convictions of malicious destruction of a building causing damage of $1,000 or more but less than $20,000, MCL 750.380(3)(a), and malicious destruction of personal property causing damage under $200, MCL 750.377a(1)(d). She was sentenced to six months of nonreporting probation with restitution to be determined at a later hearing. Defendant argues that the evidence presented at trial was insufficient to support her convictions or, in the alternative, that the verdict was against the great weight of the evidence. We disagree. Accordingly, we affirm her convictions and sentence.

No special steps are required for a defendant to preserve a challenge to the sufficiency of the evidence. *People v Cain*, 238 Mich App 95, 116-117; 605 NW2d 28 (1999). Similarly, in the context of a bench trial, a defendant need not move for a new trial in the trial court to challenge the verdict on the basis of the great weight of the evidence in order to preserve a great weight argument for appeal. MCR 7.112(C)(1)(c).

We review defendant's challenge to the sufficiency of the evidence de novo. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). We consider the evidence in a light most favorable to the prosecution to determine whether the trial court could find that each element of the crime was proved beyond a reasonable doubt. *Id.* "The test to determine whether a verdict is against the great weight of the evidence is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003). A new trial is not justified merely on the basis that testimony conflicts to some extent. *Id.* at 219.

We will not set aside a trial court's findings of fact unless they are clearly erroneous. *People v Lanzo Const Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a

definite and firm conviction that a mistake has been made." *Id.* A reviewing court also "will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses." *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008); MCR 2.613(C).

Malicious destruction of property is a specific intent crime that requires proof the defendant had the intent to injure or destroy the property. *People v Culp*, 108 Mich App 452, 458; 310 NW2d 421 (1981). The elements of malicious destruction of a building, in violation of MCL 750.380(3)(a) are: (1) the building or appurtenance to the building at issue belonged to someone other than the defendant; (2) the defendant destroyed or damaged the building or appurtenance; (3) the defendant did so willfully and maliciously, and with the intent to destroy or damage the property; and (4) the damage caused is valued at $1,000 or more but less than $20,000.[1] The elements of malicious destruction of personal property under MCL 750.377a(1)(d) are: (1) the property at issue belonged to someone other than the defendant; (2) the defendant destroyed or damaged the property; (3) the defendant did so willfully and maliciously, and with the intent to destroy or damage the property; and (4) the damage caused is valued at less than $200.[2] Damage to a building or to personal property may be proved by presenting evidence of the reasonable cost of repair. *People v LaBelle*, 231 Mich App 37, 38-39; 585 NW2d 756 (1998).

---

[1] See MCL 750.380:

> (1) A person shall not willfully and maliciously destroy or injure another person's house, barn, or other building or its appurtenances.
>
> * * *
>
> (3) If any of the following apply, a person who violates subsection (1) is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $10,000.00 or 3 times the amount of the destruction or injury, whichever is greater, or both imprisonment and a fine:
>
> (a) The amount of the destruction or injury is $1,000.00 or more but less than $20,000.00.

[2] See MCL 750.377a(1)(d):

> (1) A person who willfully and maliciously destroys or injures the personal property of another person is guilty of a crime as follows:
>
> * * *
>
> (d) If the amount of the destruction or injury is less than $200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00 or 3 times the amount of the destruction or injury, whichever is greater, or both imprisonment and a fine.

Here the evidence was sufficient to support defendant's convictions and none of the trial court's findings of fact were clearly erroneous. The convictions stemmed from damage incurred on February 7, 2009, to the car of Juanita Bradley and to the home occupied by Bradley and her adult son, Devante Holloway, on South Electric Street in Detroit. Defendant lived next door. Bradley and defendant had known each other since kindergarten and Bradley testified that they had a history of problems between them.

Bradley and Holloway testified that, around midnight on February 7, 2009, Holloway heard noise and called Bradley into his bedroom, which had two windows—one on the side of the house and another on the back of the house. They looked out the side window and saw defendant and her daughter on the side of the house pulling bricks and insulation from the house. Holloway testified that defendant was using a knife to scrape at the bricks and remove them. Bradley and Holloway then saw defendant and her son tearing bricks from the back of the house.

Holloway called 911 and remained inside the house. Bradley went outside and found defendant spray-painting the home's garage door. Holloway also saw defendant painting the garage door from his window. After Bradley asked them why they "were in the backyard tearing up [Bradley's] grandmother's house," defendant and her children began to leave. But, first, defendant walked to Bradley's car, pulled out a knife, and scraped the back of the car. Bradley later obtained estimates for repair of the resulting damage: repair of the bricks would cost $7,000; restoration of the spray-painted garage door would cost $585;[3] and repair of the car would cost $160. Bradley conceded that there was some prior damage to her home that defendant did not cause.

The police arrived on February 7, 2009, around 3:00 a.m. and completed an initial report. They returned on February 24, 2009, to take pictures of the damage. Detroit Police Officer Millicent Murry testified at trial about the contents of the initial police report and about statements she took from Bradley and Holloway on April 20, 2009, over the telephone.

Defendant, who testified on her own behalf, denied damaging Bradley's home. She stated that she did not know about the charges until the police arrested her. She denied that there was any conduct between her and Bradley that caused her concern. But she admitted that she had a past problem with Bradley's dog and that Bradley obtained a PPO against her in 2007,[4] around the same time that Bradley accused defendant's brother of damaging her home.

---

[3] With regard to the garage, after being refreshed with a written estimate by a handyman, Bradley stated that repair would cost "500 -- and I really don't have my glasses, but I think it's 85 dollars." We understand this testimony to mean that the repair would cost $585. But appellate counsel concludes that the repair would cost $85. The difference does not affect the resolution of the appeal.

[4] The PPO was dismissed when defendant challenged it in court.

The trial court credited the testimony of Bradley and Holloway. It found defendant guilty, as charged, of malicious destruction of a building causing damage of $1,000 or more but less than $20,000, and damage to personal property (Bradley's car) of less than $200. The court was not necessarily convinced that defendant caused all the damage to the home reflected by Bradley's repair estimate, but it found that defendant caused damage of at least $1,000 and left the question of a more precise damage estimate to be resolved at a restitution hearing. It sentenced defendant to six months' nonreporting probation.

Defendant argues both that she was not the perpetrator of any crime committed at Bradley's house on February 7, 2009, and that the evidence did not show beyond a reasonable doubt that any damage was done to the car or house on that date. She focuses on inconsistencies in the evidence as well as on the record to support her claim that the house and car were already damaged before February 7, 2009. She also argues that no photographs or physical evidence linked her directly to the crimes and stresses Bradley's admission that no exterior lights were on in the yard at the time of the incident.

Defendant's arguments do not undermine the soundness of the trial court's verdict or findings of fact. With regard to inconsistencies or weaknesses in the evidence, defendant correctly observes that Holloway did not remember the precise date of the incident or consistently describe how damaged the house was before the incident. Bradley's and Holloway's testimony also arguably differed on some points. For example, Bradley admitted her car had been previously damaged in an accident, but Holloway denied that Bradley had ever been in a car accident. Overall, however, Bradley and Holloway described the incident similarly and both identified defendant without question. Bradley, in particular, was very familiar with defendant and saw her on February 7, 2009, from both inside and outside the house. Further, although Bradley answered, "No," to the question, "Did you have lights outside?", there is no additional testimony about this subject, including whether there were street lights or whether the moon was out. Accordingly the trial court—which expressly acknowledged Bradley's hard feelings toward defendant and the inconsistencies in the prosecution witnesses' testimony—did not clearly err when it nonetheless credited Bradley's and Holloway's testimony, which it concluded was believable and consistent in "heart and essence."

Next, the prosecution's case was not defeated by the fact that the initial February 7, 2009, police report did not recount each piece of evidence that was later revealed at trial. Defendant appears to correctly observe that the initial report did not mention Holloway as a witness, that defendant had a knife, or the allegation that defendant damaged Bradley's car. But it did mention spray-painting and "siding" being torn from the home. Most significantly, the report consisted of only four sentences and therefore does not appear to have been designed to be exhaustive. The subsequent telephone statements taken from Bradley and Holloway clearly indicated that Holloway was a witness, that they saw defendant removing bricks from the side and back of the house, and that defendant was spray-painting the garage. Although the trial court could have chosen to question the witnesses' credibility as a result of information missing from the early report or statements—or because of the arguably minor inconsistencies in their testimony at trial—by no means was the court bound to discredit them on these bases.

With regard to the extent of damage caused on February 7, 2009, Bradley openly conceded that some brickwork was damaged before the incident. Holloway similarly testified,

for example, that there were loose bricks on the front of the house, but defendant was responsible for damaging the brickwork only on the side and back of the house. Indeed, the prosecutor expressly stated at trial that the prosecution was not arguing that defendant caused all the current damage to the home. The mere fact that there was some prior damage does not negate the evidence that defendant caused substantial damage on February 7, 2009. The full repair estimate for the home was $7,000, and defendant was alleged to have damaged brickwork and insulation on two sides of the home, causing bricks to fall from all the way up to the roof. With regard to these higher bricks—the damage to which defendant argues would have required a ladder—the trial court theorized that they may have come loose and fallen as the result of damage done by defendant lower down on the wall. Bradley also noted that her van, which was equipped with a ladder, was parked next to the side of the house that defendant damaged.[5] Because the evidence was thus consistent with the prosecution's charge that defendant extensively damaged the home's brickwork, the trial court did not clearly err when it found that the alleged damage done by defendant cost at least $1,000, although the full $7,000 repair estimate may have included repairs of prior damage not caused by defendant.

Finally, Bradley also conceded that her car was damaged in an accident before February 7, 2009. But she attributed to defendant only the scratch on the back bumper that she alleged defendant caused with the knife. Accordingly, the trial court did not clearly err when it found that defendant was responsible for the $160 car repair estimate that Bradley agreed was "just to fix the bumper."

In sum, the record supported the trial court's findings, none of which were clearly erroneous. And it is not the role of a reviewing court to question the trial court's credibility determinations. *Kanaan*, 278 Mich App at 619. Accordingly, particularly when viewing the evidence in a light most favorable to the prosecution, the evidence was sufficient to support the court's verdict and underlying conclusions that defendant caused at least $1,000 of damage to the house and under $200 of damage to Bradley's car. For these reasons, the verdict also was not against the great weight of the evidence.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Jane M. Beckering

[5] Although Bradley conceded that she had not actually seen defendant on top of the van, Bradley never claimed to have witnessed everything defendant did that night.